

PRE-APPEAL BRIEF REQUEST FOR REVIEW		Docket Number (Optional) CE11461JDP
I hereby certify that this correspondence is being electronically transmitted on the date listed below [(37 CFR 1.8(a))]. on: <u>August 12, 2008</u> Signature <u>/Silvana Wiltshire/</u> <u>Silvana Wiltshire</u> Typed or printed name	Application Number 10/674,984 First Named Inventor Brian K. Smith Art Unit 2617	Filed September 30, 2003 Examiner Casca, Fred A
<p>Applicant requests review of the final rejection in the above-identified application. No amendments are being filed with this request.</p> <p>This request is being filed with a notice of appeal.</p> <p>The review is requested for the reason(s) stated on the attached sheets(s). Note: No more than five (5) pages may be provided.</p> <p>I am the</p> <div style="display: flex; justify-content: space-between; align-items: flex-start;"> <div style="width: 45%;"> <p><input type="checkbox"/> applicant inventor.</p> <p><input type="checkbox"/> assignee of record of the entire interest. See 37 CFR 3.71. Statement under 37 CFR 3.73(b) is enclosed. (Form PTO/SB/96)</p> <p><input checked="" type="checkbox"/> attorney or agent of record. Registraton number <u>45,834</u></p> <p><input type="checkbox"/> attorney or agent acting under 37 CFR 1.34. Registration number if acting under 37 CFR 1.34: _____</p> </div> <div style="width: 45%; text-align: center;"> <p><u>/Larry G. Brown/</u> Signature</p> <p><u>Larry G. Brown</u> Typed or printed name</p> <p><u>(954) 723-6449</u> Telephone number</p> <p><u>August 12, 2008</u> Date</p> </div> </div> <p>NOTE: Signatures of all the inventors or assignees or record of the entire interest or their representative(s) are required. Submit multiple forms if more than one signature is required, se below*</p>		
<input checked="" type="checkbox"/> *Total of <u>1</u> forms are submitted.		

(SB/33 (07-05))

UNITED STATES PATENT AND TRADEMARK OFFICE

APPLICANT(S): Brian K. Smith GROUP ART UNIT: 2617
APPLN. NO.: 10/674,984 EXAMINER: Casca, Fred A
FILED: September 30, 2003 Confirmation No. 4974
TITLE: ENHANCED PASSIVE SCANNING

CERTIFICATE UNDER 37 CFR 1.8(a)	
I hereby certify that this correspondence is being electronically transmitted on the date listed below:	
Date:	August 12, 2008
Signature	/Silvana Wiltshire/
Typed or printed name:	Silvana Wiltshire

PRE-APPEAL BRIEF REQUEST FOR REVIEW

Mail Stop: **AF**
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

Applicants request review of the Final Office Action mailed April 21, 2008, relating to the above-identified application in furtherance of the Notice of Appeal filed on August 11, 2008.

Concurrent with this submission, Applicants are paying the requisite fee for a one-month Extension of Time.

Claims 1-5 and 8-18 are pending in the application, as claims 6, 7 and 19-24 were previously canceled or withdrawn. The latest version of the claims can be found in Applicants' Response of January 11, 2008. In the Office Action, claims 1, 2 and 8-18 were rejected under 35 U.S.C. 103(a) as being unpatentable

over U.S. Patent Application Publication No. 2003/0177267 to Orava, et al. (Orava) in view of U.S. Patent Application Publication No. 2004/0090929 to Laux, et al. (Laux) further in view of U.S. Patent No. 5,920,597 to Khayrallah, et al. (Khayrallah) further in view of U.S. Patent Application Publication No. 2004/0060985 to Feng (Feng) and further in view of U.S. Patent Application Publication No. 2004/0190477 to Olson, et al. (Olson). Claims 3-5 were rejected under 35 U.S.C. 103(a) as being unpatentable over Orava in view of Laux further in view of Khayrallah further in view of Feng further in view of Olson and further in view of well-known prior art (well-known according to the Examiner) under MPEP 2144.03.

Independent Claims 1 and 14

Independent claim 1 recites the limitations that a gratuitous probe response (GPR) is received and that a site timing table entry in a site timing table is updated based on the received GPR. Claim 1 also recites the limitation that a scan start time for a neighboring access point or mobile device is set based on entries in the updated site timing table. Thus, it is clear that the GPR is used to establish timing and synchronization in the device(s) that receives the GPR. Independent claim 14 recites similar subject matter.

The Examiner agrees that the combination of Orava, Laux, Khayrallah, and Feng does not disclose the receipt of a GPR (see page 4 of the Final Office Action of April 21, 2008). The Examiner then cites Olson to show that gratuitous signals were known at the time of the invention and contends that it would have been obvious to one skilled in the art to combine this feature of Olson with the

remaining references, thereby rendering claim 1 unpatentable (see page 4 of the Final Office Action of April 21, 2008). Applicants respectfully disagree.

Olson does describe a process in which an Address Resolution Protocol (ARP) Request message is sent from a first access point (AP) to a second AP. The ARP Request message is a request for a medium access control (MAC) address of a particular communication device (see paragraphs 0016-0018). The second AP will then transmit to the first AP an ARP Reply message that provides the requested MAC address (see paragraph 0018). The first AP will then add the received MAC address to its ARP cache table for future use (see paragraph 0017).

As part of Olson, the second AP will also gratuitously transmit an ARP Reply message to inform connected devices that a new device entry has been added to a Distributed Routing (DR) Table of the second AP (see paragraph 0065). The ARP Request and Reply messages are transmitted using unicast or point-to-point transmissions to avoid flooding the network, which would happen in the case of broadcast messages (see paragraph 0065).

As noted above, the GPR of the present invention is used for timing and synchronization purposes. One of skill in the art would not use the ARP Reply message of Olson to establish entries in a timing table because the ARP Reply message does not contain any information relating to timing (see paragraph 0018 of Olson). An ARP Reply in Olson is simply a message to identify the address of a particular AP to another connected device to allow the other connected device

to update its DR or address table (see paragraphs 0053 and 0066); it has nothing to do with timing synchronization.

There is further evidence that one skilled in the art would not attempt to incorporate the ARP Reply message of Olson into the proposed combination. In particular, Olson is adamant about reducing overhead in its network, as ARP Request and ARP Reply messages are unicast transmissions (see paragraphs 0034, 0037 and 0065). The GPR of the present invention is a broadcast message that can be used by multiple receiving devices to establish timing. One skilled in the art would realize that timing signals must be broadcast (not unicast) to receiving units to constantly ensure that synchronization is maintained between the units and an AP, as timing is continuously susceptible to errors. The skilled artisan would quickly reject the point-to-point scheme of Olson as ill-equipped to handle synchronization on a wide scale. A point-to-point scheme for address exchanges is acceptable because the address information will not change over time. Timing, however, is something that may be thrown off in view of numerous factors. As such, Applicants submit that one skilled in the art would not attempt to combine the ARP Reply messages of Olson into the proposed combination.

Dependent Claim 4

Dependent claim 4 recites the limitation that the GPR includes an access point timestamp and a GPR interval. The Examiner contends that such features are well-known in the art and would be obvious to combine with the combination used to reject claim 1. Applicants respectfully disagree. An AP timestamp and a GPR interval are used to establish timing between communication devices. It

would make no sense to add this information to an ARP Reply message because the ARP Reply message is strictly associated with address information (see paragraph 0018). In fact, one skilled in the art would be taught away from this combination because synchronization information would add to the size of the ARP Reply message – and thereby add to increased overhead - and would be extremely inefficient in a unicast system.

Conclusion

In view of the above, Applicants contend that the claims are patentable over the cited prior art references. Reconsideration and withdrawal of the rejection of the claims is respectfully requested. Passing of this case is now believed to be in order, and a Notice of Allowance is earnestly solicited.

The Commissioner is hereby authorized to charge any necessary fee, or credit any overpayment, to Motorola, Inc. Deposit Account No. 50-2117.

Respectfully submitted,

Date: August 12, 2008

By: /Larry G. Brown/

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